

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL
WRIT PETITION NO. 1868 (SS) OF 2005

Beena Chamoli,
W/o late Vinod Chamoli,
R/o 47/3 Rajeev Nagar, Nehrugram,
Dehradun. Petitioner.

Versus

1. Tehri Hydro Development Corporation, through its Managing Director, Ganga Bhawan Rishikesh, Dehradun.
2. Managing Director, Tehri Hydro Development Corporation Tehri.
3. General Manager, Tehri Hydro Development Corporation Tehri. Respondents.

Sri M.C.Pant, Advocate for the petitioner.
Sri U.K. Uniyal, Advocate for the respondents.

Dated: 06.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents to consider the case of the petitioner for compassionate appointment on a suitable post for which she is entitled.

2. Briefly, stated, the husband of the petitioner Sri Vinod Chamoli, who was working in the Tehri Hydro Development Corporation as Data Entry Operator died in harness on 03.04.2003. He had been given appointment under Rehabilitation Scheme as he belonged to Dub Kshetra of Tehri.

3. After the death of her husband, the petitioner, who is Graduate in Science and has also completed Nursery Teaching Training and Post Graduate Diploma in Computer Application,

applied for compassionate appointment for herself in the respondent Corporation.

4. According to the petitioner, she has met several time with the Authorities of the respondent Corporation for appointment on compassionate ground, but of no avail.

5. The petitioner moved a representation on 02.06.2005 to the respondents to grant her compassionate appointment but the same is still pending.

6. Learned counsel for the petitioner has submitted that the petitioner is a young lady of 30 years of age and she has a small child to look after and she has no other source of livelihood after the death of bread-earner.

7. Petitioner has submitted that on 23.07.2005 a meeting of the joint committee consisting of the management officials and employees of THDC held and in this meeting it was resolved that the dependents of the deceased employee of the Corporation will be given appointment soon after the death of an employee, but the grievance of the petitioner is that she is not being given the appointment on compassionate ground and the respondents are adopting pick and choose policy in the matter of compassionate appointment.

8. The Apex Court in the case of ***Sushma Gosain Vs. Union of Union and others (1989) 4 SCC 468*** has observed as under:-

“We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable

post for appointment supernumerary post should be created to accommodate the applicant.”

9. The Apex Court in the case of **Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138** has relied upon the judgment of **Sushma Gosain v. Union of India (1989) 4 SCC 468**. The relevant observations are quoted below:-

“The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family.”

“It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

10. In **Santosh Kumar Mishra Vs State of U.P [(2002)1 UPLBEC 337]**. It has been held as under:-

“Learned counsel for the petitioner has placed reliance upon the case of Raj Narain Prasad (Supra), for stressing his submission that the petitioner’s father would be deemed to have been a regular Government

servant in view of the fact that his appointment has been converted into work charge employee in pursuance of the scheme approved by the Apex Court. He further submitted that in view of the decision rendered in the case of Smt. Pushp Lata Dixit Vs. Madhyamik Shiksha Parishad and others, reported in 1991 (18) ALR 591, the petitioner is entitled for getting the appointment. In this case, the husband of Smt. Pushp Lata, was working as a Paid Apprentice. The plea that he was not a regular employee although he had been working in the department for the last 17 years was not entitled for appointment under Dying in Harness Rule was rejected by the Court and the directions were issued to accommodate the petitioner (Smt. Pushp Lata) according to her qualifications relying upon this case, the writ petition filed by Smt. Maya Devi Vs. State of U.P. and others, reported in 1998 (79) FLR 608, was also allowed in which the High Court found that the petitioner's husband in that case has satisfactorily worked for about 10 years until his death and though he may be a daily wager, the petitioner can be accommodated on compassionate grounds under Dying in Harness Rules. In the case of Smt. Saroj Devi Vs. State of U.P and others, reported in 1999 (3) ESC 2187 (All): 1 UPLBEC (Alld.) (Sum) 15, the benefit was given to the temporary appointee as he was working against a substantive vacancy."

" The Apex Court was considering the scheme and the status of a work-charge employee even after being confirmed it has been held that a work charge employee after confirmation does not cease to be a work charge

employee and he continues to be a work charge employee. The question of regularization against a regular vacancy was not in issue before the Apex Court. No rule, law or any Government order has been brought to the notice of this Court by the State to indicate that any terminal benefits have been provided to the work charge employee who have to their credit a considerable period of service and even in cases after very longer period of service, they retire as such. Even no provision for confirmation of a work charge employee as a regular employee is available in the State of Uttar Pradesh nor any such provision has been shown by the learned State Counsel despite being specifically asked for.”

“ It may also be taken note of that if daily wager or a work charge employee is engaged against a particular duty or post, and that work is of perennial nature, the presumption would be that such an employee would be entitled for being treated to have been continuing against a regular vacancy.”

11. It is well settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

12. In view of the above, the respondents are directed to decide the representation 02.06.2005 (filed as Annexure Nos.

2 to the writ petition) of the petition giving her appointment on compassionate ground according to resolution of meeting dated 23.07.2005 within a period of six weeks from the date of presentation of certified copy of the order.

13. Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

06.03.2006

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